

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

In re: NEXIUM (ESOMEPRAZOLE)
ANTITRUST LITIGATION

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

This Document Relates To:

All Direct Purchaser Actions
Walgreen (No. 13-cv-10337-WGY)
Giant Eagle (No. 13-cv-11305-WGY)
Rite Aid (No. 13-cv-12074-WGY)

**DIRECT PURCHASER PLAINTIFFS’ OMNIBUS MOTIONS IN LIMINE RELATING
TO OPENING STATEMENTS AND EVIDENCE**

In light of opening statements next week, the Direct Purchaser Class Plaintiffs and Plaintiffs in the *Walgreen* (No. 13-cv-10337-WGY), *Giant Eagle* (No. 13-cv-11305-WGY), and *Rite Aid* (No. 13-cv-12074-WGY) actions (collectively, “Direct Purchaser Plaintiffs”), respectfully request that the Court grant the following relief.

Motion in Limine No. 1: Motion to Exclude Evidence Regarding (a) Whether Direct Purchaser Plaintiffs “Passed On” Any Overcharge and (b) “Lost Profits”

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Direct Purchaser Plaintiffs move for an order precluding Defendants¹ from offering evidence or argument that the Direct Purchaser Plaintiffs were not injured to the full extent of the overcharges they can prove, or that any damages award should be reduced or otherwise limited on the grounds that Direct Purchaser Plaintiffs might have “passed on” any overcharges incurred.

¹ “Defendants” are AstraZeneca LP, AstraZeneca AB and Aktiebolaget Hassle, Ranbaxy Pharmaceuticals, Inc., Ranbaxy Inc. and Ranbaxy Laboratories Ltd., Teva Pharmaceutical Industries, Ltd. and Teva USA, Inc., and Dr. Reddy’s Laboratories Ltd. and Dr. Reddy’s Laboratories, Inc.

Motion *in Limine* No. 2: Motion to Exclude Evidence Regarding Any Alleged Failure by Direct Purchaser Plaintiffs' to Mitigate Their Damages

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Direct Purchaser Plaintiffs request that the Court preclude Defendants from offering evidence or arguing that Direct Purchaser Plaintiffs failed to mitigate their damages.

Motion *in Limine* No. 3: Motion to Bar Reference to Treble Damages, Attorney Fees, and Costs

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Direct Purchaser Plaintiffs request that the Court order Defendants not to refer to or introduce any evidence at trial regarding Direct Purchaser Plaintiffs' ability to recover treble damages or attorneys' fees and costs.

Motion *in Limine* No. 4: Motion to Exclude Any Evidence Regarding Direct Purchaser Plaintiffs' Financial Condition

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Direct Purchaser Plaintiffs move *in limine* for an order precluding Defendants from offering evidence or making reference to named Direct Purchaser Plaintiffs' financial condition or status before the jury.

LOCAL RULE 7.1(a)(2) CERTIFICATION

Plaintiffs made a good faith attempt to resolve the issues in this motion by asking defendants whether they consented to this motion, and defendants did not respond as of this filing.

Dated: October 14, 2014

/s/ **Thomas M. Sobol**

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CERTIFICATE OF SERVICE

I, Thomas M. Sobol, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: October 14, 2014

/s/ Thomas M. Sobol
Thomas M. Sobol